



June 5, 2001

Mr. Larry Lynch
Sheriff
McLennan County
219 North 6th Street
Waco, Texas 75701

OR2001-2319

Dear Mr. Lynch:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148063.

The McLennan County Sheriff's Office (the "sheriff") received two written requests for records pertaining to a custodial death at the McLennan County Jail. The first request seeks the "full case incident report" concerning the custodial death. The second request is broader in nature, and seeks "all reports, etc. in your file concerning" the decedent. You have submitted to this office as responsive to the requests a "custodial death report," including attachments. You contend that the custodial death report is made confidential under article 49.18 of the Code of Criminal Procedure and thus must be withheld from the public pursuant to section 552.101 of the Government Code.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, *statutory*, or by judicial decision." (Emphasis added.) Article 49.18(b) of the Code of Criminal Procedure requires that law enforcement agencies complete custodial death reports and file those reports with the attorney general, who "shall make the report, with the exception of any portion of the report that the attorney general determines is privileged, available to any interested party." In Open Records Decision No. 521 at 5 (1989), this office held that under article 49.18(b), in conjunction with a directive issued by the Office of the Attorney General, section one of custodial death reports filed with this office is public information. All remaining portions of the custodial death report, *i.e.* Parts II through V, including all attachments, are deemed privileged under article 49.18(b) and must be withheld from the public. Open Records Decision No. 521 at 5 (1989). Accordingly, the sheriff must withhold Parts II through V of the custodial death report. However, Part I of the custodial death report is expressly made public under article 49.18(b) and therefore must be released to both requestors.

Article 49.18(b) of the Code of Criminal Procedure does not, however, make confidential all information held by a local law enforcement agency simply because the information is also included in or attached to a custodial death report submitted to the attorney general. If a governmental body receives a request for information otherwise generated or maintained by the law-enforcement agency as part of its ordinary responsibilities, those documents may be withheld only if one of the Public Information Act's exceptions or another specific law protects them. Open Records Decision No. 521 at 7 (1989).

In this regard, we note that the second request received by the sheriff seeks "all reports, etc. in your file concerning" the deceased. We interpret this request to encompass all records held by the sheriff regarding the deceased, including records maintained outside of the custodial death report. You have not raised any other exception to disclosure regarding these documents. Section 552.301 of the Government Code dictates the procedure that a governmental body must follow when it seeks a decision from the attorney general as to whether requested information falls within an exception to disclosure. Among other requirements, the governmental body must submit to this office "written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld." Gov't Code § 552.301(e)(1)(A). Otherwise, the requested information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302. Because you have not provided this office with an explanation as to why responsive documents maintained outside of the custodial death report are excepted from public disclosure, we have no basis on which to conclude that a compelling reason exists for withholding those documents. We therefore conclude that the sheriff must release to the second requestor all documents pertaining to the deceased that the sheriff generated or maintained as part the sheriff's ordinary responsibilities, *i.e.*, records not created as a result of the custodial death, unless another specific law outside the Public Information Act protects them. *See* ORD 521 at 7.

In summary, the sheriff must release to both requestors Section I of the custodial death report, but must withhold Sections II through V. The sheriff must also release to the second requestor all documents pertaining to the deceased that were not created or maintained as a result of the custodial death, unless another specific law outside the Public Information Act protects them.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).


If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/RWP/seg

Ref: ID# 148063

Encl. Submitted documents

cc: Ms. Geleene Trent
11144 Park Vistas
Northglenn, Colorado 80234
(w/o enclosures)

Mr. Bradley T. Steele
Law Office of Bradley T. Steele, P.C.
211 East Tyler, Suite 721
Longview, Texas 75601
(w/o enclosures)